INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statement	2
A. The facts found by the Board	2
1. The Association at Red Arrow	3
a. Formation of the Association	3
b. The Association in operation at Red Arrow	7
2. The Association at the other petitioners	10
3. The discharges at Red Ball	14
a. The discharge of Thomas	14
b. The discharge of Cranford	15
4. The execution and notarization of the charges	17
B. The Board's conclusions	18
C. The Board's order	19
D. The proceedings in the Court of Appeals	19
Argument	20
Conclusion	23
Appendix	24

CITATIONS

Cases:

Consumers Power Co. v. *National Labor Relations Board*, 113 F. 2d 38	22, 23
General Pictures Co. v. *Electric Co.*, 304 U. S. 175	20
Marlin-Rockwell Corp. v. *National Labor Relations Board*, 133 F. 2d 258	23
National Labor Relations Board v. *J. G. Boswelll Co.*, 136 F. 2d 585	22, 23
National Labor Relations Board v. *Brozen*, 166 F. 2d 812	21
National Labor Relations Board v. *Clark Phonograph Co.*, 176 F. 2d 341	21
National Labor Relations Board v. *Gilfillan Bros.*, 148 F. 2d 990, enforcing, 53 N.L.R.B. 574	20
National Labor Relations Board v. *Indiana & Michigan Electric Co.*, 318 U. S. 9	22
National Labor Relations Board v. *LaSalle Steel Co.*, 178 F. 2d 829, certiorari denied May 29, 1950, No. 701, October Term, 1949	21
National Labor Relations Board v. *Mylan-Sparta Co.*, 166 F. 2d 485	21

Cases—Continued Page

National Labor Relations Board v. *National Garment Co.*, 166 F. 2d 233 21
National Labor Relations Board v. *J. S. Popper, Inc.*, 113 F. 2d 602 23
National Labor Relations Board v. *Whittenberg*, 165 F. 2d 102 21

Statutes and Rules:

Administrative Procedure Act (60 Stat. 237, 5 U. S. C. Sec. 1001, *et seq.*), Section 5 (c) 21
National Labor Relations Act (49 Stat. 449, 29 U. S. C. 151, *et seq*):

Section 7 24
8 (1) 3, 24
8 (2) 3, 20, 24
8 (3) 3, 20, 24

National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141, *et seq.*):

Section 8 (a) (1) 3
8 (a) (2) 3
8 (a) (3) 3
8 (c) 21, 25
10 (b) 21, 25
10 (e) 26

Rules and Regulations of the National Labor Relations Board, Series 5 (12 Fed. Reg. 5658, Sec. 203.9) 22

Miscellaneous:

1 Sutherland, *Statutory Construction* (3d Ed., 1943), 438 21
2 Sutherland, *Statutory Construction* (3d Ed., 1943), 136 21

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 181

RED ARROW FREIGHT LINES, INC., ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 293-297)[1] is reported at 180 F. 2d 585. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 146-280) are reported at 77 NLRB 859.

JURISDICTION

The decision of the court below was rendered on March 11, 1950, and a petition for rehearing was de-

[1] The symbol "R" refers to the transcript of record; the symbols "B.A." and "R.A." refer to the appendices to the briefs filed in the court below by the Board and by petitioners (respondents below), respectively.

nied on April 11, 1950 (R. 297, 353). A final decree was entered May 1, 1950 (R. 353). The petition for a writ of certiorari was filed on July 5, 1950. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, and under Section 10(e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether the Board's findings that petitioners violated Section 8(1), (2), and (3) of the National Labor Relations Act are supported by substantial evidence.

2. Whether the Board's disestablishment order is valid and proper.

3. Whether the 1947 amendments to the Act invalidated proceedings theretofore taken.

4. Whether the charge filed with the Board was properly sworn to and notarized.[2]

STATEMENT

A. The facts found by the Board

Upon the usual proceedings under Section 10 of the original and amended Acts, the Board on May 25, 1948, issued its findings of fact, conclusions of law, and order (R. 146-280). The Board found that

[2] Since the Board found (R. 150) that the charge met the requirements of its rules, petitioners' questions numbered 3, 4, and 6, which rest upon a contrary assumption, are not properly presented. Petitioners' questions numbered 7 and 8, which deal with the effect of the Administrative Procedure Act, are likewise not properly presented since petitioners make no showing of any respect in which that Act was violated (see pp. 21-22, n. 10, *infra*).

eight of the petitioners, who are motor carriers transporting commodities in interstate commerce, had violated Section 8(1) and (2) of the Act by dominating and interfering with the formation and administration of the ninth petitioner, the National Association of Motorized Common Carrier Truck Line Employees (herein called the Association) and by contributing support to it (R. 149, 275). The Board further found that petitioner "Red Ball"[3] discharged two employees in violation of Section 8(3) and (1) of the Act (R. 151, 275-276).[4] The Board's subsidiary findings and the supporting evidence may be summarized as follows:

1. *The Association at Red Arrow*

a. Formation of the Association

The Board found that the Association was organized and thereafter administered primarily by Robert S. Craig, "a representative of management" (R. 148-149, 193-195, 226). The Board's finding

[3] The names of petitioner companies will be abbreviated as follows: Red Arrow Freight Lines, Inc.—"Red Arrow"; H. P. Brown, d/b/a Brown Express—"Brown Express"; Johnson Motor Lines and Johnson Storage & Distributing Company, Inc.,—"Johnson"; Merchants Fast Motor Lines, Inc.,—"Merchants"; H. E. English and O. B. English, d/b/a Red Ball Motor Freight Lines—"Red Ball"; Sproles Motor Freight Lines, Inc.,—"Sproles"; and Sproles-Red Ball Lines, Inc.—"Sproles-Red Ball."

[4] All the proceedings in this case up to and including the issuance of the Intermediate Report occurred prior to the 1947 amendments to the National Labor Relations Act (R. 280). The provisions of Section 8 (1), (2), and (3) of the original Act, herein found to be violated, were continued without relevant change in Section 8 (a) (1), (2), and (3) of the amended Act.

that Craig, who bore the title of "Special Representative" at Red Arrow, "occupied and occupies a position which identifies him with management and enables him to translate to the employees the policies and desires of management" (R. 193) finds ample support in the record and is not here challenged (B. A. 20-22, 28-37, 43-44, 63-65, 162-164).

During the latter part of 1936 and early in 1937 when Red Arrow drivers evinced a great deal of interest in unionism, Craig, who had earlier suggested that a "company union" would "be better" than the International Brotherhood of Teamsters, AFL, (R. 197; B. A. 18-19), advised the drivers to see one Thomas, at that time secretary of the Joint Conference at Humble Oil Company, and obtain a copy "of his by-laws" (R. 197-198, 200; B. A. 45-46, 171-172). The Joint Conference was admittedly an employer-dominated union during the period in question (R. 198; B. A. 172-173). Craig further suggested that the employees invite Thomas to speak to them. The employees followed both suggestions, and Thomas addressed them at a meeting held in a company office (R. 201; B. A. 46, 172). At another meeting, also held in a company office, Craig told the assembled drivers that if they joined the A. F. of L., their "dues would be high * * * [and they] would have to sit in meetings with Negroes" (R. 202; B. A. 11).

Soon after April 12, 1937, when this Court upheld the constitutionality of the Act, President L. B. Brown interjected himself in the organizational

drive of the employees. At a meeting of the employees, Brown, after telling them that "sooner or later * * * we would have to become union and why not have a union of our own," introduced Craig, saying "Mr. Craig had a plan he thought we would like" (R. 203-204, 255; B. A. 5, 6, 8). Thereafter Craig "explained what it was * * * to have one of our [unions]" (R. 204; B. A. 7). At another meeting Brown told the employees that he could not tell them to organize or not to organize but that "he didn't have to negotiate with the [A. F. of L.] Union, or be told how to run his business; he would close the place up first" (R. 204-205; B. A. 12-13, 169).

Shortly thereafter, another meeting was held on the "Patrick Company dock," located directly across the street from Red Arrow, to discuss the advantages and disadvantages of an independent union (R. 205-206; B. A. 46-47). Craig was summoned to the meeting by Jim Watkins, a leading independent union protagonist (R. 206; B. A. 177). When driver Bozarth suggested at the meeting that they forget about the independent union, Craig replied: "No, boys, we are not going to forget it, we are going to get some kind of a union" (R. 206; B. A. 47).

A week later an election to determine whether the employees should join the A. F. of L., or an Independent Union was held in the office of Red Arrow (R. 207-209, 215; B. A. 15-16, 17, 49). Present at the terminal during the voting were Craig,

Superintendent Foy, and Chief Solicitor Sanford (R. 215; B. A. 16, 17). When Bozarth and Overall, the employees in charge of the balloting, returned from a temporary absence from the office, they found Craig and Foy (who occupied an office adjacent to the office in which the balloting took place) tampering with the ballots (R. 211, 216; B. A. 16-17). Thereupon Bozarth declined further participation in the election proceedings (*ibid.*). At the conclusion of the balloting it was announced that the membership voted for an independent union (R. 211; B. A. 17).

Thereafter, on May 23, 1947, 36 employees held a meeting in the office of the company auditor and selected the negotiating and grievance committee (R. 216; B. A. 49, 50). Craig prepared a document which apprised the membership of the selection of the committees and afforded them an opportunity to ratify or reject them (R. 216-217; B. A. 49-50, 51, 215). At the May 23 meeting or shortly thereafter, Craig was "appointed" president of the Association, together with the other officers (R. 217; B. A. 52).

Within 2 days after the May 23 meeting Craig prepared a petition, signed by 66 employees, formally advising the company of the selection of the negotiating committee (R. 218; B. A. 50-51). The petition was presented to President L. B. Brown by Craig and 2 of the 6 committeemen (R. 219; B. A. 52). At the ensuing negotiations Craig "spoke for the committee" (R. 219; B.A. 191). The subjects

discussed were wage raises, seniority rights, and grievance procedure (B.A. 192).

On June 17, 1937, Red Arrow signed the first contract with the Association, which contract is still in effect changed only by the addition of supplements or amendments (R. 219; B.A. 38). The original contract and its supplements have contained union-shop or closed-shop clauses, and the company has orally agreed to check off the dues of the employees upon the execution of written authorizations (B.A. 65, 38).

In August 1937, the Association was incorporated in the State of Texas after Craig had drawn up the articles of incorporation with the assistance of Auditor Bell (R. 220; B.A. 32).

b. The Association in Operation at Red Arrow

The Board found that Craig, Red Arrow's cashier and Special Representative, is, and was, "the motive power behind all Association policies and activities" (R. 226). In fact, the Association is known throughout the area of its operations as the "Craig Organization" or "Craig Association," and at the Board hearing was continually so referred to by counsel for respondents and the Association and by witnesses, called by both the Board and respondents (R. 226; B.A. 7, 11, 14, 79, 126, 128, 130). Craig has been president of the Association from its inception (R. 194; B.A. 34). He is its chief negotiator (R. 224; B.A. 61, 62). In these negotiations Craig described himself as "sort of an arbi-

trator" (R. 226-227; B.A. 40). He spends 3 to 14 days per month away from his office on Association business (R. 225; B.A. 39). According to his own testimony, meetings outside of Houston among employees of respondents other than Red Arrow are held only when "they call me up * * * when I go up and conduct it" (B.A. 39). In addition, Craig has performed the usual functions of the Association's treasurer in keeping the Association's books and in preparing all its financial statements and reports (R. 225; B.A. 42, 82, 106, 108, 109, 110, 159, 165).

The Association's headquarters are at 1415 Conti Street, Houston, which is the address of Red Arrow (R. 223; B.A. 23). It is at this address that the Association has received its bank statements (R. 223-224; B.A. 82, 106, 107, 161, 162, 165), the State Franchise Tax receipts (R. 224; B.A. 159) and bills of every type (R. 223-224; B.A. 82-83, 84, 107, 108, 109, 112, 113, 158-162, 165-166). The great bulk of these bills are in care of Red Arrow (*ibid.*). The Association's own stationery from 1937 up to the date of the hearing bore this address (R. 223; B.A. 35). Craig conducts Association business in his private office at the Red Arrow address (R. 223; B.A. 23, 24).

In addition to the use of its address, Red Arrow permitted the Association to use other of its facilities for Association business. Ayers, secretary of the Association from its inception until 1943 was

allowed, during his entire tenure of office, to type the Association's minutes in a company office on a company typewriter; he kept the minutes in his desk drawer (R. 223; B.A. 23, 24, 21). Evans, who succeeded him, also typed the minutes in a company office (R. 223; B.A. 178). Mrs. De Hay, secretary to Craig in 1941, typed union membership cards and contracts in her office on a company typewriter (R. 223; B.A. 25). The financial records of the Association were kept in a filing cabinet of a Red Arrow office (R. 223; B.A. 35). The Association utilized the company's telephone, clerical, and mimeograph facilities (R. 223; B.A. 35, 52-53). Its expense account forms were printed forms used by Red Arrow (R. 224; B.A. 107, 159, 161, 165).

Finally, Red Arrow extended certain special privileges to the Association's two business agents. Craig selected the business agents in February 1946 to assist him in running the Association (R. 224; B.A. 65, 110). The company immediately granted them indefinite leaves of absence; they were still on leave at the time of the Board hearing in December 1946 (R. 224; B.A. 62-63, 187). The company issued to them passes which authorized the use of company trucks, when traveling on Association business (R. 224; B.A. 194, 112-113, 114); and granted them permission to use the company dormitories thereby saving their hotel expenses (*ibid.*).

2. *The Association at the other petitioners*

In the latter part of 1943 or early in 1944, the Teamsters Union, to intensify its organizational drive in the Southern states, particularly in the Dallas area where the petitioners maintained terminals, formed the Southern Conference of Teamsters (R. 228, 229; B.A. 156-157). Having signed up a majority of petitioner Sproles' employees in the middle of 1943, the Union began to press for a contract in January or February 1944 (R. 228; B.A. 181, 182). Union organizational activity was also rife at Brown Express (R. 228; B.A. 95-96). On December 15, 1944, the Union filed a petition with the Board, requesting certification at Johnson; the Board held a hearing on the petition on January 15, 1945, and conducted the election on March 6, 1945 (R. 229; B.A. 74).[5]

The Association proceeded to organize among the employees of the petitioners only after the Union drive had been under way for some time. On January 9, 1944, Craig announced his intention to "tour the various territories and contact the managements of the various firms" to interest them "in our union" (R. 228; B.A. 199). On February 13, 1944, Craig reported that "each of the firms wanting to become associated with us would have to prove at least 75% membership in their employees" (R. 229; B.A. 200).

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[5] The Union was defeated in the election; Johnson's interference with the election is described at R. 233-235.

The signing up of petitioners' employees in the Association did not begin, however, until February 1945. On February 18, 1945, the Association held a meeting at the Liberty Hall, in Dallas, Texas, attended by delegations from all petitioners (R. 230; B.A. 186-187). "Delegates" from at least two companies—Johnson and Sproles—attended at the request of management (R. 230, 232, 246; B.A. 66-67, 151, 72). Red Arrow employees Watkins, Bailey, and Hester—all of whom received indefinite leaves of absence—acted as organizers along with Craig (R. 230; B.A. 69, 186; *supra*, p. 9). Craig, the chief spokesman at the meeting, told the assembled drivers that the motor line owners "got together, held a meeting and decided they'd rather for us to join [the] Association than to join some other union" (R. 230, 231; B.A. 71, 67). Thereafter, Craig distributed authorization cards to the delegates and the organizational campaign among the petitioners' employees was under way. The pattern of organization at each petitioner was strikingly similar (R. 194).[6]

Thus, at Johnson,[7] the "delegates" to the organ-

[6] The following discussion covers only a few of the episodes which support the Board's finding that petitioners dominated and assisted the Association. The Board's detailed findings (R. 149, 227-265) are supported by the evidence (B.A. 66-68, 70, 72-77, 79-82, 86-105, 108-112, 115, 117-119, 122, 124-125, 128-132, 146-149, 151-153, 165, 175-176, 178, 184-185, 193-194, 211-212).

[7] W. A. Johnson is the owner of both Johnson Motor Lines and Johnson Storage & Distributing Company. The Board order is directed against Johnson, doing business under both names. Johnson and the Association apparently treated both

izational meeting were told by owner Johnson, "there would be a man there named Craig, and whatever he said to do was all right" (R. 231; B.A. 66-67). Later, on the eve of the Board election, Johnson instructed one of his employees "to get all the boys lined up for it [the Association] because he'd rather have that than to have the AFL" (R. 233; B.A. 75-76). Johnson subsequently recognized the Association, and Johnson himself selected the committeemen who "represented" the employees, and promptly signed a contract providing for union security and a check-off (R. 236, 261; B.A. 68, 73, 193-194).

Similarly at Merchants, the company representative advised the employees that "the company would prefer this union [the Association] in preference to other unions" (R. 241; B.A. 98), and President Whitehead instructed the Association organizers to "go ahead * * * the quicker the better" (R. 241-243; B.A. 98, 104-105). This company likewise signed a closed shop contract with the Association without even a *prima facie* showing of a majority (R. 262, 244-245; B.A. 206, 209-210).

Petitioner Sproles [8] likewise threw its weight be-

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enterprises as a single organizational unit, for a single contract covered all of the employees and the employees were signed up as if they worked for one company (B.A. 74). Moreover, the company itself interchanged the employees of both firms indiscriminately (B.A. 78).

[8] The Board order is directed against Sproles and its successor Sproles-Red Ball. Sproles was a corporation owned by Ed Sproles, and Red Ball was a partnership owned by

hind the Association, and made clear its antipathy to outside unions. Owner Ed Sproles told a number of employees that he was "a hundred percent" for the union "he found" and "wanted us all to join it" (R. 246-247; B.A. 152). Subsequently Sproles himself appointed the committeemen that were to "represent" the Association employees at the "negotiation" of the contract, and signed a closed shop agreement which the committeemen had not previously discussed but which they signed at Sproles' request (R. 247-249; B.A. 147-149).

A similar contract was obtained at Brown Express after the company had assisted Craig's organizing efforts (R. 237, 240; B.A. 87-91, 193-194). President Harry Brown himself advised two employees to join the Association, representing, contrary to the then-existing fact, that it already had a majority (R. 237-238, 261-262; B.A. 86, 88, 96, 201-205).

At Red Ball (where two employees had been discharged for activities on behalf of the Teamsters union, *infra,* pp. 14-17), the employees were assured by their supervisors that the Association was "all right" (R. 249-250; B.A. 122, 211), and one supervisor frankly admitted that the purpose of the organizational drive of the Association was "to keep others out" (*ibid.*). English, the owner of Red Ball, first agreed to the Asso-

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Henry and O. B. English. In January 1946, both enterprises were merged or consolidated (R. 151; B.A. 4), and thus Sproles-Red Ball became the successor of Red Ball as well as of Sproles.

ciation contract and thereafter appointed the committeemen who would "represent" the employees (R. 250-251; B.A. 130-132).

Each of the petitioners also rendered further support and assistance to the Association by permitting organizing activities on company time and property, by furnishing it with company equipment and facilities, and by granting employees leaves of absence, or time off with pay, when they were engaged in Association business (R. 232-242, 247-250; B.A. 72-73, 76-77, 80-81, 90-94, 98, 99, 112-114, 117, 125, 147-149, 175, 176).

3. *The discharges at Red Ball*

a. The discharge of Thomas

F. L. Thomas was first employed by Red Ball November 1942 as a line driver (R. 265; B.A. 119). He was discharged in April or May 1944 (*ibid.*).

When Thomas asked Dock Foreman McCullough the reason for his discharge, he was told, "All I can tell you they told me you were dissatisfied" (R. 266; B.A. 119). Thomas thereafter called on owner H. E. English who informed him that the reason for his discharge was that he had "too much influence among men and you talk too much" (R. 266; B.A. 119-120).

English rehired Thomas about 2 months later after employee Nelson assured him that Thomas had nothing to do "with what happened in the past" (R. 266; B.A. 120). Nelson also assured

him that he need not worry about the "union" insofar as Thomas was concerned (R. 266-267; B.A. 126).

After Red Ball signed its contract with the Association, it became necessary to determine whether Thomas' seniority should date from the time of his original employment in 1942 or from the date of his reemployment (R. 267; B.A. 122-123, 141-142). Sanford, at that time assistant general manager of respondent, and Carrell, secretary to English, decided that he was entitled to full seniority because Thomas "was discharged in 1944 for reasons that were later found to be groundless" (R. 267; B.A. 207, 208, 140-142). Sanford testified, and the Board found, that these reasons were that "he and two other drivers allegedly were going to refuse to pull their runs out because they wanted more money and they were using that medium with which to force the company to pay them more money" (R. 267; B.A. 141).

b. The discharge of Cranford

James D. Cranford was employed by Red Ball from June 1944 until October 6, 1945, the date of his discharge (R. 268; B.A. 132). The chronology of the events leading to his discharge is as follows:

Canford and a fellow employee, Hogge, had on several occasions discussed the possibilities for "organizing the drivers in the AFL" (R. 268; B.A. 133). On one occasion less than a month before his discharge, Cranford promised to secure a

supply of AFL applications (*ibid.*). Shortly thereafter, Cranford met Craig (R. 268; B.A. 133). Craig asked him what he thought about the Association, and Cranford replied "It's all right, I guess" (*ibid.*). Later on the same day Craig informed Cranford that Hogge reported him to be an AFL adherent (R. 269; B.A. 133).

On the day before his discharge, Cranford was eating his dinner in a cafe, sitting near an AFL organizer (R. 269; B.A. 135). On his return to the terminal he met Bob Mooney, an assistant foreman and brother of Steve Mooney, respondent's Houston agent, and a first cousin of owner English (R. 269; B.A. 136, 121). Mooney asked him "what they were talking about out there" and Cranford denied that they had been talking about anything in particular (R. 269; B.A. 136).

On the same day, Sanford and Steve Mooney asked employee Thomas, whose earlier discharge has been discussed (*supra*, pp. 14-15), whether Cranford was "back of all the trouble," i.e., the the AFL activities, at Red Ball (R. 269; B. A. 125, 127). Thomas attributed the trouble not to Cranford but to the employees' inadequate wages (*ibid.*).

On the following day, Steve Mooney notified Cranford that he was discharged (R. 269-270; B. A. 134). When asked the reason for his discharge, Mooney replied "Oh, you are dissatisfied" (*ibid.*), but despite Cranford's denial that he was dissatisfied Mooney refused to give Cranford any

particulars and parried Cranford's inquiry as to whether he was not being let out because of the Union (*ibid.*).

In the light of the foregoing, the Board found that Cranford was discharged because he was suspected of having become active in the AFL, and that the discharge was therefore discriminatory within the meaning of Section 8 (3) and 8 (1) of the Act (R. 151, 271). The Board expressly found (R. 270) that Cranford's discharge was but "a fragment of the pattern which Red Ball had been establishing through the years," which included the discharge of Thomas for suspected concerted activities, preference for the Association and antipathy to the AFL, and continued interference with the organizational activities of the employees (R. 270). The Board also noted (R. 270-271) that the discharge came at a time when the employees were dissatisfied with the Association and were striving to secure higher wages, an objective with which Cranford became identified upon his having been seen in a restaurant near an AFL organizer.

4. *The execution and notarization of the charges*

The several charges filed with the Board under Section 10 (b) were on the form customarily furnished by the Board (R. 17-34, 50-67). Each of the charges was filed in the name of the International Brotherhood of Teamsters and was signed by James B. Turner as business representative. Turner was in fact business representative of Local

745 and not of the International, but he had been authorized to sign the charges by representatives of the International (R. A. 270, 272). Each charge concluded with the following certificate:

Subscribed and sworn to before me this [date] at Dallas, Texas, as true to the best of deponent's knowledge, information and belief.

WALLACE C. REILLY,

[SEAL.] *Board Agent or Notary Public.*

Commission expires June 1, 1947.

The Board overruled objections that the charges were defective in not correctly reflecting Turner's status, in not specifying the capacity in which Reilly acted in witnessing the signature, and in not furnishing proper foundation for a prosecution for perjury in the event of misstatement as to contents (R. 150).

B. The Board's conclusions

On the basis of the facts set forth above, the Board concluded that all the employer petitioners dominated and interfered with the formation and administration of the Association, and contributed financial or other support to it, in violation of Section 8 (2) and (1) of the Act, and that the contracts of all employer petitioners with the Association were illegal. The Board further concluded that petitioner Red Ball unlawfully discharged employee Thomas for concerted activities, within the meaning of Section 8 (1) of the Act and dis-

criminated with respect to the hire and tenure of employee Cranford within the meaning of Section 8 (3) and (1) (R. 149).

C. The Board's order

The Board's order required the employer petitioners to cease and desist from the unfair labor practices found; to cease and desist from recognizing the Association as representative of any of its employees and from giving effect to any contract with it; to withdraw recognition from and disestablish the Association as the collective bargaining representative of any of its employees; and to post appropriate notices. The order further required petitioner Red Ball and its successor Sproles-Red Ball to cease and desist from discouraging membership in the Teamsters Union, and from in any manner interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act; to make whole employees Thomas and Cranford, the employees discriminated against, and to offer reinstatement to the latter (R. 152-157).

D. The proceedings in the Court of Appeals

On February 8, 1949, the Board filed in the court below a petition for enforcement of its order (R. 1-8). On March 11, 1950, the court below handed down its opinion (R. 293-297), and on May 1, 1950 entered its final decree (R. 353), enforcing the Board's order in full.

ARGUMENT

1. The facts set forth in the Statement show, as the Board and the court below found, that petitioners, operating primarily through Craig, formed, dominated, and assisted the Association, thereby violating Section 8 (2), and that petitioner Red Ball discriminatorily discharged two employees for the purpose of discouraging union membership, thereby violating Section 8 (3). It is clear that these findings are amply supported by the record. In any event, "granting of the writ would not be warranted merely to review the evidence or inferences drawn from it." *General Pictures Co.* v. *Electric Co.*, 304 U. S. 175, 178. The remedies prescribed by the Board, including disestablishment of a company dominated union and reinstatement with back pay of discriminatorily discharged employees, are the traditionally accepted remedies for the violations here found.[9]

2. Petitioners' contention that the 1947 amendments vitiated these proceedings has no merit. The 1947 amendments were enacted after the Intermediate Report of the Trial Examiner but prior to the Decision and Order of the Board. The changes which the amendments made in the internal structure and operation of the Board (see Pet., p. 15), did not, contrary to petitioners' assertion

[9] Contrary to petitioners' statement (Pet., p. 10) the court in *National Labor Relations Board* v. *Gilfillan Bros.*, 148 F. 2d 990, 992 (C. A. 9), enforced the Board's disestablishment order, 53 NLRB 574, 576.

(Pet., p. 16), nullify proceedings already taken. See, *e.g., National Labor Relations Board* v. *Whittenberg,* 165 F. 2d 102, 104 (C. A. 5); *National Labor Relations Board* v. *Mylan-Sparta Co.,* 166 F. 2d 485, 488 (C. A. 6); *National Labor Relations Board* v. *National Garment Co.,* 166 F. 2d 233, 238 (C. A. 8); see also, 1 Sutherland, *Statutory Construction* (3d Ed., 1943) 438, 2 *id.* 136. Similarly, the proviso in Section 10 (b) of the amended Act precluding the issuance of a Board complaint based upon charges filed over six months after the commission of the unfair labor practice (see Pet., p. 19) is by its own terms inapplicable to proceedings in which, as in this case, the complaint issued prior to enactment of the amendments. See cases cited *supra;* see also *National Labor Relations Board* v. *Brozen,* 166 F. 2d 812, 813 (C. A. 2); *National Labor Relations Board* v. *Clark Phonograph Co.,* 176 F. 2d 341, 343 (C. A. 3). Since the Board's findings rest primarily upon the acts of Craig in forming and administering the Association, and not upon utterances of company officials which may be regarded as "views, argument, or opinion," Section 8(c) has no application in this case. Cf. *National Labor Relations Board* v. *LaSalle Steel Co.,* 178 F. 2d 829 (C. A. 7), certiorari denied May 29, 1950, No. 701, October Term, 1949.[10]

[10] Petitioners appear to suggest also that the Board procedures violated the Administrative Procedure Act, but the petition is silent as to the manner in which the alleged violation occurred, or as to the section of that Act deemed violated. In the petition for rehearing filed in the court below and

3. Petitioners contend that the charges as here executed and verified were defective in that their allegations were sworn to on "knowledge, information, and belief," and in that they misstated the capacity of the signer and failed to state whether the person verifying the signature did so as "Board Agent" or as "Notary Public." The contentions are patently frivolous. The charges were all filed on forms furnished by the Board, which specifically provide that the allegations be sworn to on "knowledge, information, and belief."[11] That Turner, who signed the charges as "business representative" of the International, actually held that office only in the Local is immaterial, not only because he was authorized to sign by the International but also because Sec. 203.9 of the Board's Rules provides that a charge "may be made by any person." 12 Fed. Reg. 5658; see also *National Labor Relations Board* v. *J. G. Boswell Co.*, 136 F. 2d 585, 588 (C. A. 9). And whether Reilly, who verified Turner's signature did so as "Board Agent" or as

reprinted as an appendix to the petition here (Pet., pp. 30-40), petitioners claim that the Trial Examiner did not observe the requirements of Section 5 (c) of that Act. The allegation in the petition for rehearing that the Trial Examiner engaged in *ex parte* conferences relevant to the case is totally without support in the evidence, and petitioners at no time suggested either to the Board or to the court below that they had any evidence of such improper conduct.

[11] Such an allegation is plainly sufficient to be a foundation for a prosecution for perjury. That it would be insufficient to initiate a proceeding at law in Texas is irrelevant; the charge "does not even serve the purpose of a pleading" but "merely sets in motion the machinery of an inquiry." *National Labor Relations Board* v. *Indiana and Michigan Electric Co.*, 318 U. S. 9, 18. See also, *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. 2d 38, 42 (C. A. 6).

"Notary Public" is equally immaterial, although the presence of the notarial seal discloses that he acted in the latter capacity. Similar technical objections to the form of charges or to the validity of their execution and verification have been consistently rejected by the courts. *National Labor Relations Board* v. *J. G. Boswell Co.*, 136 F. 2d 585, 588 (C. A. 9); *National Labor Relations Board* v. *J. S. Popper, Inc.*, 113 F. 2d 602, 603-604 (C. A. 3); *Marlin-Rockwell Corp.* v. *National Labor Relations Board*, 133 F. 2d 258, 259 (C. A. 2); *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. 2d 38, 42 (C. A. 6).

CONCLUSION

The decision below, sustaining the Board's findings and order, is correct and presents neither a conflict of decisions nor any substantial question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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AUGUST, 1950.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Supp. II, 141, *et seq.*), are as follows:

* * * * *

SEC. 8. * * *

* * * * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * *

SEC. 10. * * *

* * * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided,* That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the

filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, * * *.

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has

not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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